

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

*Plaintiff,*

vs.

McGINN, SMITH & CO., INC.,  
McGINN, SMITH ADVISORS, LLC,  
McGINN, SMITH CAPITAL HOLDINGS CORP.,  
FIRST ADVISORY INCOME NOTES, LLC,  
FIRST EXCELSIOR INCOME NOTES, LLC,  
FIRST INDEPENDENT INCOME NOTES, LLC,  
THIRD ALBANY INCOME NOTES, LLC,  
TIMOTHY M. McGINN, AND  
DAVID L. SMITH,

*Defendants, and*

LYNN A. SMITH,

*Relief Defendant, and*

DAVID M. WOJESKI, Trustee of David L. and Lynn A.  
Smith Irrevocable Trust U/A 8/04/04,

*Intervenor.*

Case No.: 1:10-CV-457  
(GLS/DRH)

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that, upon the declaration of Robert H. Iseman, dated December 17, 2010 (together with all exhibits thereto), the Memorandum of Law, dated December 17, 2010, and all proceedings previously held herein, the undersigned, will move this Court at a motion term to be held before Honorable David R. Homer at the United States District Court for the Northern District of New York, James T. Foley U.S. Courthouse, 445 Broadway, Albany, New York, on **January 20, 2010 at 9:30 a.m.** (the "Return Date"), or as soon thereafter as counsel may be heard, for an Order:

- a) lifting the preliminary injunction put down in this case to the limited extent necessary to allow Mr. David Wojeski, as Trustee of the David L. and Lynn A. Smith Irrevocable Trust U/A 8/04/04 (the "Trust"), to pay as an administrative expense of the Trust the invoice for ICRH's services in connection with the November 16, 2010, evidentiary hearing in this case; and
- b) awarding such other and further relief as the Court deems just and proper.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rule 7.1(b)(1) of the Local Rules for the United States District Court for the Northern District of New York, movant demands that any opposing papers be served on the undersigned no later than seventeen (17) days prior to the Return Date of this motion.

DATED: December 17, 2010

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP

By: s/ Robert H. Iseman  
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